

FILED
02-12-2019
CIRCUIT COURT
DANE COUNTY, WI
2019CV000084

EXHIBIT G

STATE OF WISCONSIN

CIRCUIT COURT

BRANCH 15

DANE COUNTY

THE LEAGUE OF WOMEN VOTERS OF WISCONSIN,
DISABILITY RIGHTS WISCONSIN, INC.,
BLACK LEADERS ORGANIZING FOR COMMUNITIES,
GUILLERMO ACEVES, MICHAEL J. CAIN, and
JOHN S. GREENE,

Case No. 19-CV-84

Plaintiffs,

Case Code 30701 & 30704

v.

DEAN KNUDSON, JODI JENSEN, JULIE M. GLANCEY,
BEVERLY GILL, ANN S. JACOBS, MARK L. THOMSEN,
MEAGAN WOLFE, and TONY EVERES,

Defendants.

**AFFIDAVIT OF MICHAEL J. CAIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

STATE OF WISCONSIN

COUNTY OF DANE

I, Michael J. Cain, being duly sworn on oath, depose and state as follows:

1. I am an adult resident of the State of Wisconsin with my principal residence located at 5010 Bayfield Terrace, in the City of Madison, Dane County, Wisconsin. I have personal knowledge and belief as to the matters set forth below.

2. I am domiciled in Wisconsin and am and have been a Wisconsin taxpayer during all relevant times for purposes of this lawsuit.

3. I served as an attorney for the Wisconsin Department of Natural Resources (“DNR”) for more than 34 years. At DNR, I was personally involved in the development of State agency administrative rules, guidance documents, and policies and in assuring those documents complied with State and federal statutes and rules.

4. During my tenure at DNR, I served under 7 Governors and 7 DNR Secretaries, of varying political parties and with varying priorities. At all times, I served the State of Wisconsin and worked steadfastly to advance Wisconsin law as determined by the elected and appointed political leaders.

5. In my experience, many of the guidance documents issued by the DNR were developed as early as the 1970s (while others were developed more recently as statutes and rules have changed), but all are continuously reviewed and amended to assure consistency with the law and evolving scientific and engineering advancements. Most guidance documents are not controversial and are both necessary and useful for the efficient and consistent administration of complex State programs.

6. I currently am and have been, for more than three decades, a sportsman and an advocate for the protection of Wisconsin’s natural resources, a steward for the efficient and appropriate expenditure of taxpayer dollars, and a taxpayer concerned with the lawful allocation and use of public funds.

7. I believe that the December 2018 Extraordinary Session of the Legislature was unconstitutionally convened and that all legislation and actions—including the adoption of 2017 Wisconsin Act 369 and the appointment of individuals to various boards,

councils, and advisory committees—that occurred during that session are illegal, unenforceable, and void.

8. I believe that I will suffer a pecuniary loss and be injured as a Wisconsin taxpayer due to the significant taxpayer funds that will be expended in reviewing existing guidance documents for compliance with 2017 Wisconsin Act 369; the significant costs agencies will incur in modifying their existing guidance documents to meet the requirements of 2017 Wisconsin Act 369; and the anticipated rescission of guidance documents that will impair the DNR and other State agencies in applying those provisions of Wisconsin law they are charged with enforcing.

9. I believe it will cost the State millions in taxpayer dollars and agency staff time to comply with the provisions of 2017 Wisconsin Act 369 affecting State agency administrative rules, guidance documents, and policies, because compliance will require significant staff hours and resources to bring thousands of State guidance documents into compliance with those provisions.

10. I believe implementing the provisions of 2017 Wisconsin Act 369 affecting State agency administrative rules, guidance documents, and policies will cause significant disruption and delay to State agencies' processing of permit applications, because implementation will require technical staff to divert their efforts from processing permit applications and instead focus on implementing the provisions contained in 2017 Wisconsin Act 369.

11. I believe the provisions of 2017 Wisconsin Act 369 affecting State agency administrative rules, guidance documents, and policies will undermine consistency in the administration of State agency programs and the training of State agency staff, because many guidance documents will not be brought into compliance with these provisions within the six-month period they mandate and will be subject to rescission. As a result, State agencies will be precluded by law from using or relying on these documents for training purposes, program administration, and guidance to applicants for permits as they prepare application materials and project plans.

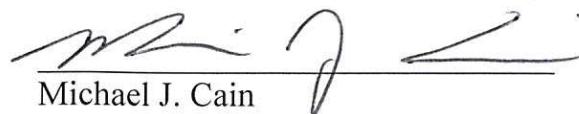
12. I believe that implementation of the provisions of 2017 Wisconsin Act 369 affecting State agency administrative rules, guidance documents, and policies is both wasteful and unnecessary.

13. I believe that I will suffer a pecuniary loss and be injured as a Wisconsin taxpayer by Sections 35 and 80 of 2017 Wisconsin Act 369, which eliminate judicial deference to certain agency interpretations, decisions, and orders and will create uncertainty; encourage litigation; and result in increased costs to administrative agencies and the Department of Justice, which is tasked with representing administrative agencies.

14. I believe that I will suffer a pecuniary loss and be injured as a Wisconsin taxpayer as a result of the confirmation of 82 appointees to various State authorities, boards, councils, and commissions, because those confirmations will necessitate the unlawful disbursement of tax revenues to pay salaries, benefits, per diems, and expense reimbursements to individuals serving on various State authorities, boards, councils, and

commissions who were not lawfully appointed to those positions because their confirmation occurred as part of the unconstitutional December 2018 Extraordinary Session.

15. I believe that for these and other reasons, 2017 Wisconsin Act 369 will cause me irreparable harm as a taxpayer and as a former State employee for the DNR.



Michael J. Cain

Subscribed and sworn to before me
this 9th day of January, 2019



[Signature]
Notary Public, State of Wisconsin
My commission expires: is permanent